THE INTERNATIONAL STATUS OF THE GRAND DUCHY OF LUXEMBURG AND THE KINGDOM OF BELGIUM IN RELATION TO THE PRESENT EUROPEAN WAR.

"You are always talking to me of principles as if your public law were anything to me; I do not know what it means. What do you suppose that all your parchments and treaties signify to me."—*Alexander I. to Talleyrand, quoted by John Morley in Life of William E. Gladstone.*

"Just for a word, 'neutrality,' a word, which in war time had so often been disregarded—just for a scrap of paper—Great Britain was going to make war on a kindred nation."—*Dr. von Bethmann-Hollweg, German Imperial Chancellor, to Sir E. Goschen, British Ambassador at Berlin. See "White Paper" of Great Britain.*

THE International *status* of the Grand Duchy of Luxemburg and of the Kingdom of Belgium, through whose territory the army of Kaiser William II marched, in order, to use the expression of Grotius, "to meet the enemy," has been, since the outbreak of the present European war, the crucial point of discussion between the diplomatists and publicists of the belligerents, each trying to impress upon the neutral public the justice of the cause of their country.

But speaking generally, in the eyes of the neutrals, in the present world-turmoil, one of the most civilized nations of Europe stands before the forum of justice as the disturber of universal peace and the violator of the law of nations. Leaving to future historians to pass upon the first charge, let us see whether the second has any foundation justifying the criticisms of and the abuses heaped upon the ruler as well as the government of the nation accused of the flagrant misuse of its might for the furtherance of its national interests.

The German Kaiser and his ministers are accused of having trampled underfoot the fundamental rights of the weak States by violating their independence and neutrality, thus acting not only contrary to international usage, but also in direct violation of the international compacts of which their government was one of the principal contracting parties.

Limiting ourselves to these particular charges, let us first examine the violation of the conventional right in order to see whether the accusation is well founded and the accused nation deserves to be, so to say, outlawed from the membership of the family of nations.

The diplomatic instruments bearing upon the question are: first, The Treaties of Guaranty of the Neutrality of Belgium of April 19, 1839, and that of May 11, 1867, of the Grand Duchy of Luxemburg; second, The Hague Conventions of October 18, 1907, on the rights and duties of neutrals in time of war on land.

The neutral status of Belgium is inserted in three separate treaties concluded at London on April 19, 1839.

The first is signed by the representatives of Austria, France, Great Britain and Russia on one part, and the Netherlands (Holland) on the other, which after acknowledging the dissolution of the union of the Netherlands and Belgium, declares in article VII of the annex to this treaty that "Belgium within the limits specified in articles I, II and IV, shall form an independent and perpetually neutral State. It shall be bound to observe such neutrality towards all other States."

The second treaty is that which separates Belgium from Holland and in that also the perpetual neutrality of the former country is recognized.

The third treaty is that concluded between the same five Powers and Belgium, in which the following article appears:

"Article I * * * * they (the five Powers) declare that the articles herewith annexed, and forming the tenor of the treaty concluded this day between His Majesty the King of the Belgians and His Majesty the King of the Netherlands, Grand Duke of Luxemburg, are considered as having the same force as if they were textually inserted in the present act, and they are thus placed under the guarantee of their said Majesties (of the five Powers)."

It should be observed that Holland, although one of the contracting parties to one of the above instruments, did not guarantee the neutrality of Belgium, but merely recognized that fact; therefore, although bound to respect it, she is not under any obligation to defend it in case it is violated by others.

Now has Germany violated these treaties and if so, in what way does she justify her action?

The German government, in answering the charges of the violation of her treaty engagements, sets up two kinds of defences. On one hand, acknowledging bluntly its guilt through the mouths of its highest officials, namely, the Imperial Chancellor and the Secretary of State for Foreign Affairs, tries to justify its unlawful actions, "on the ground of supreme necessity", and "high military reasons"; on the other hand, she accuses Belgium that she connived with the enemies of Germany to attack or facilitate an attack through her territory, against the Kaiser's country.

It should be observed that no charge whatever is made against the Grand Duchy of Luxemburg, whose territory has been equally invaded, in defiance of the treaty of 1867, which guaranteed also the neutrality of that country, and of which Prussia is one of the principal contracting parties.

One of the so-called hostile acts attributed to the Belgian government, is the embargo placed just before the outbreak of the war,

on cereals, which measure seems to have affected some corn destined for Germany. This charge is so trifling that it hardly needs any refutation. Suffice it only to say that even had it been true, it could certainly not have justified an invasion of Belgium; besides, the official correspondence of Belgium shows that the prohibition of cereals was of a general character, and that as soon as it was found out that the particular corn was in transit for Germany it was immediately released.[1]

The other charge against Belgium—and the only serious one—is that the Belgian government, some time before the war, was, on one hand helping the designs of France, who, according to "reliable information,"[2] was planning to attack Germany; on the other hand, was plotting with Great Britain by acquiescing in the landing of a British army in Belgium.

In proof of this "plot" the German government made public certain so-called incriminating documents, which, unfortunately for Germany, rather weaken than strengthen her case. Thus, in the minutes of the Conference between the Chief of the General Staff of Belgium and the British Military Attaché at Brussels, a passage appears, which translated into English reads as follows: "The Military Attaché answered that he knew it (that Great Britain could not land any troops in Belgium, without the consent of the latter country), but as we (Belgians) were not able to prevent the Germans from marching right on us, England would land her troops in Belgium."

Again in the original draft of the report of the Belgian Major General to the Belgian Minister of War, concerning a conference with the British Military Attaché, it is stated that "in case Belgium should be attacked the sending of about 100,000 troops was provided for." And that "the entry of the English in Belgium would only take place after the violation of our (Belgian) neutrality by Germany."[3]

It is self-evident from these "discoveries," that if there was any "plot" it was for the purpose of defending Belgium from an attack by Germany, which was quite legitimate and within the letter and the spirit of the treaty of guarantee, and not in order to invade or facilitate an incursion to the German Fatherland.

Leaving aside the subtle arguments used by the Kaiser's Ministers and the unconvincing dialectics of their apologists, for the purpose of establishing the so-called guilt of the Belgian authorities as to

[1] Gray Paper of Belgium, no. 79.

[2] Gray Paper of Belgium, no. 19.

[3] New York Sun of December 20, 1914, in papers published by Dr. Bernhard Dernburg, formerly German Colonial Secretary.

these charges and looking into the facts of the case as they are presented by both sides, one cannot help seeing that the government of King Albert, far from conniving with the enemies of Germany to attack the latter, did on the contrary everything in its power to prevent France and Germany from making the territory of Belgium the theatre of the war operations.

From the perusal of the official papers and other facts known already, an impartial observer cannot see anything which in the slightest degree throws a suspicion of bad faith on the part of the Belgian Ministers. If there is one thing that Belgium can be accused of both by France and Germany it is that, ever since her independence in 1831, she never showed any inclination to be incorporated into either of her powerful neighbors. On the contrary, she adhered steadfastly to her right to shape her own political destiny, regardless of the community of language or affinity of nationality with France or Germany. The people of Belgium, be they Belgian or Flemish, had one desire, and that was to live in peace within their present geographical limits, and to further the commercial, industrial and intellectual development of their country. As for the question of concerting measures for the defence of their territory, with any of the signatories of the Treaty of Guarantee of 1839, the Belgian government was more than justified in appealing to any of these Powers to assist her to repel any actual or contingent invasion of her territory. It was not only her right to do so, but also her duty. Hence the construction of fortresses and other means of defence undertaken by Belgium ever since her independence.[4] Hence the existence of a standing army. That right was never questioned by any of the Powers who guaranteed her neutrality. At the time of the conclusion of the Treaty of 1867 which guaranteed the neutrality of Luxemburg, and on the adoption of Article III of that instrument, by which the government of Luxemburg undertook not to maintain in their territory any fortified places or a military establishment, the Belgian Plenipotentiary fearing lest such stipulation might be used as an argument against his country's right of having fortified places and generally an army for the defence of Belgium, made the following declaration: "It is well understood," he said, "that Article III does not affect the right of other neutralized states to preserve, and if necessary, to improve, their fortified places and means of defence." Not only was no objection made to this declaration by any of the Plenipotentiaries of the contracting parties, but they acquiesced in it, the declaration being inserted in the 4th Protocol of the Conference.[5]

[4] Dr. Geffcken in Holtzendorf's des Völkerrechts IV. 136.

[5] E. Servais, Le Grand Duché de Luxemburg et le Traité de Londres, 174.

While official Germany pleads guilty to the charge of the violation of the Treaty of 1839 guaranteeing the independence and neutrality of Belgium, and tries, in an afterthought, to justify her action by accusing the Belgian government of plotting with the enemies of Germany, in the hope of palliating the effect of her wrongful act on public opinion, her apologists, be they official or officious, becoming "more Royalists than the King" of Prussia (although some of them, no doubt, work, much to their credit, pour le Roi de Prusse) strain every nerve to prove either that the Treaty of 1839 was obsolescent or that the Kaiser was justified in disregarding it because the supreme necessity of the State required it. In fact while the German government does not question the validity of that instrument its apologists consider it as not being binding upon the German Empire.

One of them,[6] after making a distinction between "guaranteed" and "ordinary" neutrality, lays down the rule that a belligerent is not under any special obligation to observe the "ordinary" neutrality. In plain words that, in the absence of a treaty guaranteeing the neutrality of a state, a belligerent, may, if it thinks fit, march his army against her enemy, across the territory of a neutral state, against the consent of the latter. After laying down this premise and drawing the above conclusion, he enters into the discussion of his principal subject as to whether Germany has, in the present war, committed an illegal act by violating the guaranteed neutrality of Belgium. In the first place he questions the validity of the treaty of 1839, which guaranteed the "independence and neutrality of Belgium." The reasons given for the support of that view are the following:

First. That the Treaty of 1839 was signed by Prussia, and not by the present German Empire.

Second. That Belgium, is now, according to his opinion, a world power, with many millions of inhabitants, a large army, and extensive colonies and lastly "an active commerce mediated by its own marine, with many, if not all, parts of the world."

It should, however, be at the outset stated that the meaning of the word "perpetual" ought not to be misunderstood and by giving to it a false construction try to show its so-called absurdity. It is used in treaties recognizing or guaranteeing the permanent neutrality of States in order to distinguish it from temporary neutrality, namely from that of the states who chose to remain neutral during a war between other Powers. While non-belligerent States are not under any obligation to be neutral, the States under perpetual neutrality are bound to keep the peace, unless they are attacked, as it is now the

[6] Prof. John W. Burgess of Columbia University, New York Times of October 28, 1914.

case of Belgium. The States guaranteeing such perpetual neutrality are undoubtedly bound to respect it, as is the case of Switzerland, and in some cases, to defend such State if attacked, as is the case of Belgium. It is, however, beyond question that notwithstanding the word perpetual, a new treaty may alter such situation, and it is not less true that as long as such treaty is in existence, it would be, to use the words of the German Imperial Chancellor, "a violation of the dictates of international law" to violate the neutrality of such a state in order to reach the enemy's country "by the quickest and easiest route," as the German Secretary of State officially declared.

Prof. Burgess, in order to prove the soundness of his view as to the obsolescence of the treaty of 1839, quotes the well known passage from Mr. Gladstone's speech on Belgian neutrality, to which we shall hereafter refer, and which has now become the shibboleth, so to say, of the defenders of the rights and wrongs of Germany.[7]

Another argument that is used by the apologists of Germany in order to prove their contention as to the non-validity of that instrument, is the fact of the conclusion of two additional treaties between Great Britain on one part and France and Prussia on the other, during the Franco-German war of 1870, for the preservation of the Belgian neutrality by the then belligerents.

As the views of most of the apologists of Germany evidently represent the opinion of intellectual Germany, it may be necessary to give some explanations, so that the public may form a correct opinion as to the legal side of the points at issue.

The first question to be examined is the validity of the treaty of 1839 guaranteeing the perpetual neutrality of the Kingdom of Belgium in regard to the German Empire.

Did the creation of the German Empire in 1871, affect in any way the validity of the treaty of 1839 of which Prussia was one of the principal contracting parties?

As a general rule, States which form a confederation or a federal union, retain their right of concluding treaties, unless it is specifically withdrawn from them by the act which creates their union. Consequently pre-existing treaties are considered as being binding upon them unless such compacts are of a character seriously compromising or nullifying the confederation or union, and in the last case their denunciation may be justified.

The Constitutional Act of 1871 establishing the German Empire did not obliterate the political entity of the States that entered the union and least of all of the Kingdom of Prussia whose sovereign

[7] Dr. Bernard Dernburg, formerly German Colonial Secretary, in North American Review, December 1914, and New York Sun of December 6, 1914. Also Dr. Edmund von Mach in New York Times of November 1, 1914.

became the Emperor of the federal union. Some of these States retained even the right of concluding certain kinds of treaties and in a limited way preserved the right of sending and receiving diplomatic agents.

The question of the validity of treaties concluded by some of the German States before the Constitutional Act of 1871 was tested in the courts of this country more than once. Thus, *In re Thomas,*[8] in which the point at issue was whether a fugitive from justice from Bavaria could be extradited by virtue of the treaty of extradition concluded between the United States and Bavaria, before the creation of the German Empire in 1871, Mr. Justice Blatchford in deciding the case, said:

"It is contended on the part of Thomas (the person whose extradition was sought by the representative of Germany) that the convention with Bavaria was abrogated by the absorption of Bavaria into the German Empire. An examination of the provisions of the Constitution of the German Empire does not disclose anything which indicates that the existing treaties between the several States composing the confederation, called the German Empire, and foreign countries, were annulled or to be considered as abrogated." The same question came up before the Supreme Court of the United States in 1901 in the case of *Terlinden v. Ames*[9] when the highest court of the land endorsed the opinion of Judge Blatchford. In this case also the issue was the same, namely, as to whether the treaty of extradition concluded between the United States and Prussia before the Act of 1871, was still in force, the official representative of Germany who applied for the extradition of the Prussian subject contending that it was valid, while the person whose extradition was asked claimed that it was null and void, because, as he alleged, Prussia concluded the treaty before the creation of the German Empire. Mr. Justice Fuller, handing down the decision of the court, said: "Undoubtedly treaties may be terminated by the absorption of Powers into other nationalities and the loss of separate existence as in the case of Hanover and Nassau, which became by conquest incorporated into the Kingdom of Prussia in 1866. Cessation of independent existence rendered the execution of treaties impossible. But where sovereignty in that respect is not extinguished, and the power to execute remains unimpaired, outstanding treaties cannot be regarded as avoided because of impossibility of performance. On the adoption of the Constitution of the German Empire, the King of Prussia was found to be the chief executive of the North German Union endowed with power to carry into effect its international obligations, and those of his

[8] 12 Blatch 370.
[9] 184 U. S. 270.

Kingdom, and it perpetuated and confirmed that situation. * * * We do not find in this constitution any provision which in itself operated to abrogate existing treaties or to affect the status of the Kingdom of Prussia in that regard. Nor is there anything in the record to indicate that outstanding treaty obligations have been disregarded since its adoption. So far from that being so, those obligations have been faithfully observed."

Now to what category does the treaty of 1839, guaranteeing the neutrality and independence of Belgium belong? Is it one of those instruments that might have compromised the union of the German Empire and consequently non-obligatory upon it, if denounced in proper time? Strictly speaking the answer may be in the affirmative although there may be strong reasons for holding the contrary, on account of the preponderant position held by Prussia in the confederation and the fact that her sovereign was also the Emperor of the German Empire. Accepting then the construction most favorable to Germany, one would naturally ask why the far-sighted Prince Bismarck did not at that time denounce the treaty of 1839 as being detrimental to the interests of the Empire? To ask the question is to answer it. Simply because he thought that the existence of that instrument at that time (the school of Bernhardi being of later creation) corresponded to the interests of Germany, as well as of Prussia. The reason that it was not denounced up to the outbreak of the present war —although the plans for the invasion of France through Belgium were prepared long ago—was no doubt the fear of involving Germany in a war with Great Britain. It was very prudently thought that military considerations dictated silence and circumspection until the arrival of the day of surprise, when diplomatic papers may easily be cast to the waste-basket, since "the vital interests" of Germany were considered as being paramount to any "scraps of paper" and that "necessity knew no law."[10]

Coming now to the other argument that the creation of a large army, the building of fortresses and the acquisition of a colony of Belgium invalidated the treaty of 1839, we should from the outset state that the discussion will be only academic because official Germany did not set up this defense.

The right of Belgium to have an army, irrespective of its size, was never questioned by any of the parties to the treaty of 1839. Not only can the increase of the army of Belgium and the building of fortresses in no way affect the treaty of neutrality, but on the contrary it can strengthen it by its effectiveness better to defend the neutralized neutrality against a foreign invasion. As a general rule

[10] Dr. von Bethmann-Hollweg, the Imperial Chancellor, speaking in the Reichstag on December 2, 1914, said "We notified Belgium that the necessities of self-defence would compel us to march through Belgium."

all the perpetually neutralized states have that right, unless it is specifically withdrawn from them as it has been done in the treaty of 1867 guaranteeing the permanent neutrality of Luxemburg.

Now as for the other argument that the acquisition by Belgium of a colony in Africa vitiates, so to say, the treaty of 1839 guaranteeing her neutrality, it should be admitted that this theory is not new, and has already been discussed by various internationalists, particularly at the time of the incorporation of the independent state of Congo to Belgium, which took place, as it is known, in 1908, through the cession of the rights of sovereignty over the former state by the late King Leopold to Belgium.

The controversy, however, on this point has only been academic—and will therefore be treated as such—because the contracting parties to the treaty of 1839 have never raised the question. Moreover, some of them have actually recognized, either directly or indirectly, the annexation of the state of Congo to Belgium without any reservation whatever as to their treaty obligations towards the latter country.[11]

In fact, there exist two doctrinal views on the point. According to the one, which is that of the great majority of the writers who have discussed this question, the acquisition of the Independent State of Congo by Belgium did not in the least impair the validity of the treaty of 1839, but they also assert that the obligations resting upon the guaranteeing Powers by that treaty do not extend to the colonial possessions of Belgium, because the contracting parties to that instrument guaranteed only the territory of Belgium proper.[12]

[11] Treaty concluded between Belgium and France as to the right of presumption of the latter Power over the Belgium Colony of Congo, in case Belgium should subsequently wish to renounce her right of sovereignty over that African Colony. Also a treaty with Great Britain in regard to the lease in perpetuity of certain territory to Congo, which territory will revert to the former country in case Belgium wished to abandon her African colony. See particulars in an elaborate article entitled "L'Annexion du Congo á la Belgique," by Paul Fanchille, in Revue Générale de Droit International Public II, 432 et seq. 1895. The German Government recognized the annexation of Congo to Belgium. Thus, on January 22, 1909, the Under Secretary of Foreign Affairs of Germany, speaking before the Budget Commission, declared that his Government took notice of the communication of the Belgian Government that the Independent State of Congo was incorporated to Belgium and that therefore the annexation became an accomplished fact. Roger Brunet, L'Annexion du Congo a la Belgique et le Droit International 164.

[12] A. Rivier, Principes du Droit des Gens, I, 172-173. R. Brunet, L'Annexion du Congo a la Belgique, 141-143. E. Descamps, La Neutralité de la Belgique, 50 et seq. A. Merignac, Traité de Droit Public International II, 53-54. E. Nys, Le Droit International I, 429 et seq; the same writer in Etudes de Droit International, deuxieme série, 145; the same writer in Revue de Droit International et de Législation Comparée. Deuxieme série III, 28, 1901. J. Westlake in same review, 394. This distinguished English author is of opinion that it is safer in such cases for the neutral state to come to a previous understanding with the guaranteeing powers. Also, by the same writer, International Law I, 29, where he says that if the neutralized state extends its territory without the consent of the guarantors, it raises the dangerous question whether the guarantee continues to exist even for its original territory. J. Westlake International Law I, 29.

According to a second opinion, which is that of the minority, the guarantee of the neutrality of Belgium has been vitiated on account of the acquisition by her of the Independent State of Congo, but a specific declaration from the guaranteeing States may reestablish the former condition.[13]

Another French author holds also that Belgium infringed her privileged status guaranteed by the treaty of 1839 by the incorporation of the Congo State, but this writer sees a palliation of this infringement in the express or tacit consent of the guarantors for the acquisition of the Congo State by Belgium. He, however, is of opinion that a new declaration by the Powers who guaranteed the neutrality of Belgium, might obviate complications in the future.[14]

On the other hand the Belgian Government going to the other extreme, asserts that the guarantee of the neutrality of Belgium extends *ipso facto* to her African colony, and therefore the neutrality of the former Independent State of Congo, which was merely recognized, but not guaranteed, is merged, so to say, in the guarantee of the neutrality of Belgium, since, as they contend, the African colony is now part of Belgium.[15]

This is no doubt a very bold view and lacks the essential foundation for its support, namely a special treaty to that effect, and in the absence of such a specific instrument, the guarantee embodied in the treaty of 1839 cannot *ipso facto* extend to the African colony of Belgium, the Powers having expressly guaranteed the territory of the latter country.

Another apologist of Germany,[16] referring to the treaty of 1839, comes also to the same conclusion as Prof. Burgess, but in a different way. This writer brushes aside the famous instrument of 1839 as being null and void, for the simple reason, as he puts it, that Belgium was (and not is) a sovereign State, and that as such she had the "undoubted right to cease being neutral whenever she chose by abrogating the treaty of 1839," that "she had promised (in 1839) to five Powers that she would remain perpetually neutral. These Powers in their turn had promised to guarantee her neutrality." After laying down this historically false premise, he draws the above conclusion; but this writer does not tell us when Belgium abrogated the treaty of 1839. After making an unjuridical comparison between treaties of peace and those of perpetual neutrality, he comes abruptly to the conclusion that Germany had the right to set at naught the treaty guaranteeing the neutrality and independence of Belgium, because,

[13] Paul Fanchille, in Revue Générale de Droit International Public II, 416 et seq.

[14] F. Despagnet, in Essai sur les Protectorats, 286 et seq. Article by the same writer on this subject in Revue Bleue, June 23, 1894.

[15] Declaration of Belgian Government in the Legislative Chambers, February, 1895. See also Fanchille in Revue Générale de Droit International Public II, 416 et seq.

[16] Edmund von Mach, in New York Times of November 1, 1914.

as he alleges, the latter country violated it. This apologist of Germany also holds that the treaty of 1839 is obsolete and quotes Mr. Gladstone as his authority, who, according to his (Dr. Mach's) opinion "very clearly stated that he did not consider the treaty of 1839 enforceable." Now as a matter of fact the famous British statesman, as it will be hereafter seen, never gave such a construction to that instrument.

After disposing of the treaty of 1839 in such a formal manner, Dr. von Mach tells us that the neutrality of Belgium rests on the stipulations of the second Hague Peace Conference. We also learn from him that the first Hague Convention contained no rules forbidding belligerents from entering neutral territory, and that "in the second Conference it was thought desirable to formulate such rules," because, according to this internationalist, "it was felt that in war belligerents are at liberty to do what is not expressly forbidden." We are further told that Germany and Belgium have ratified the whole Convention, and one would naturally expect him to draw the conclusion that at least these two powers are bound to respect the rules on neutrality laid down in that instrument, namely, that "the territory of neutral powers is inviolable" and that "belligerents are forbidden to move troops or convoys * * * across the territory of a neutral power." Instead of arriving at this conclusion he dilates upon the refusal of Great Britain to ratify that Convention which naturally cannot relieve the responsibility of Germany towards Belgium. This apologist of Germany entirely loses sight of the fact that it is not the Hague or other Conventions that created international law, and that the rules governing neutrality, as many others of a similar character, have existed for centuries and have been in use among civilized nations and that belligerents in the absence of written compacts are guided by these rules and regulations.

Reverting now to the contention that Belgium was at liberty to renounce her privilege of being permanently neutral, the historical facts prove the contrary. Any one acquainted with the diplomatic history of the neutralization of Belgium must have noticed that that situation was imposed upon that country, not so much in the interest of the latter, as in that of the guaranteeing States. The fear of the absorption of Belgium by France was at that time the principal motive of the conclusion of the treaty of 1839. As a distinguished Belgian jurist well observes, in the permanent neutralization of States which took place in the course of history, the interests of the guaranteeing States was to such a degree preponderant, that it was the only thing that was considered.[17]

[17] E. Nys, Le Droit International I, 429. Also Rivier, Principes du Droit des Gens I, 116, and Merignac op. cit. II, 59.

Now coming to the treaty of 1870, which is adduced by the friends of Germany as evidence as to the alleged obsolescence of the Convention of 1839, one can only refer them to a careful reading of that treaty, which speaks for itself.

In fact not only the context of that treaty or treaties of that date concluded for the maintenance of Belgian neutrality, but also the diplomatic history of that time show clearly that the contracting parties to those instruments far from considering the treaty of 1839 as obsolete, have on the contrary distinctly affirmed that the former were concluded for the maintenance of the latter.

Two separate and identical treaties were concluded in 1870, the one between Great Britain and France and the other between Great Britain and Prussia. The preamble of both these instruments runs as follows:

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of Prussia (or the Emperor of the French, as the case might be) being desirous at the present time of recording in a solemn act their fixed determination to maintain the Independence and Neutrality of Belgium, as provided in Article VII of the Treaty signed at London on the 19th of April, 1839, between Belgium and the Netherlands, which Article was declared by the Quintuple Treaty of 1839 to be considered as having the same force and value as if textually inserted in the said Quintuple Treaty, their said Majesties have determined to conclude between themselves a separate Treaty which without impairing and invalidating the conditions of the said Quintuple Treaty shall be subsidiary and accessory."[18]

There can certainly not be plainer language than this. The contracting parties concluded the Treaties of 1870 because they desired, as they asserted, to record in a solemn act their determination to maintain the neutrality of Belgium as provided in the treaty of 1839 "without impairing or invalidating that instrument, which shall be subsidiary and accessory to it."

But Article III is not less clear. It is as follows:

"This Treaty (of 1870) shall be binding on the High Contracting Parties during the continuance of the present war between the North

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Sir Edward Grey, the British Secretary of State for Foreign Affairs, speaking in the House of Commons on August 3, 1914, on the subject of Belgian neutrality, and referring to the treaty of 1839, said: "It is one of those treaties which are founded, not only on consideration for Belgium, which benefits under the treaty, but in the interests of those who guaranteed the neutrality of Belgium." London Times, August 4, 1914.

See also Protocol of February 19, 1831, where it is stated that the reasons for the neutralization of Belgium were the establishment of a just equilibrium in Europe and the maintenance of general peace. Sir R. Phillimore, Commentaries on International Law, I, 495 ed. 1871.

[18] Hertslet, Map of Europe by Treaty III, 1886.

German Confederation and France, and for 12 months after the ratification of any Treaty of Peace concluded between those Parties; and on the expiration of that time the Independence and Neutrality of Belgium will, so far as the High Contracting Parties are respectively concerned, continue to rest as heretofore on Article I of the Quintuple Treaty of the 19th of April 1839."

From the above extracts it is evident that the contracting parties to these instruments, namely the treaties of 1870, never lost sight of the validity of the treaty of 1839. Therefore the argument as to the obsolescence of the latter instrument falls to the ground.

Let us now go beyond the treaty of 1870 and see whether there really existed serious reasons which prompted the British Government to secure the conclusion of additional treaties for the preservation of the neutrality of Belgium during the Franco-German war of 1870.

Looking into the diplomatic history and parliamentary debates of Great Britain of that time one can preceive two things: first, the extreme solicitude and concern of the British Government for Belgium; second, the indifference and, one may say, the apathy towards the Grand Duchy of Luxemburg, although the neutrality of that country was also guaranteed by a solemn instrument, namely the treaty of 1867, to which Great Britain was also a party. While the violation of the neutrality of Belgium was always considered by England as a *casus belli* and gave rise to the participation of the latter country in the present war, the similar act of Germany against the Grand Duchy of Luxemburg, whose territory was also declared perpetually neutral by a solemn treaty, hardly attracted any attention, nor can it be said that the Government of the Grand Duchy acquiesced in that act willingly; on the contrary, they strongly protested against the violation of their neutrality by Germany.

An historical review of this question will explain the reasons of the discrimination, so to say, made by Great Britain between Belgium and the Grand Duchy of Luxemburg, and will also give us a clue to the causes which led to the conclusion of the treaties of 1870, guaranteeing for the second time the neutrality of Belgium during the Franco-German war of that time and a year after the conclusion of peace, as above explained. But in order to understand that we must look a little into the history of the Grand (but in fact the small) Duchy of Luxemburg.

By the Congress of Vienna of 1815 the territory or province of Luxemburg was created into a state under the name of Grand Duchy of Luxemburg and was placed under the Sovereignty of the King of the Netherlands (Holland), with the title of Grand Duke of Luxem-

burg.[19] When in 1831 Belgium was constituted into a separate state, part of the territory of Luxemburg was given to Belgium now forming the Province of Luxemburg.

On the dissolution of the German Confederation in 1866, Napoleon III tried to incorporate the Grand Duchy of Luxemburg to France by purchasing it from the Sovereign of the Duchy, namely, the King of the Netherlands. This attempt was then frustrated by the King of Prussia who, however, claimed in his turn—notwithstanding the severance of the connection of the Grand Duchy from the German Confederation—that he had still the right to maintain a Prussian garrison in the fortress of the city of Luxemburg, to which France strenuously objected. The matter came to an impasse and France and Prussia were nearly on the verge of war when through the mediation of England the contending parties reached a compromise. France withdrew her plan of purchase and Prussia undertook to withdraw her garrison, on condition that the Grand Duchy should be declared perpetually neutral under the collective guarantee of several Powers, which proposition was ultimately accepted and embodied in a treaty. What is important to note is that it was at the request of Prussia and not of France that the Grand Duchy of Luxemburg was neuralized and placed under the collective guarantee of the Powers; and it is Germany now, and not France, that violated the neutrality of that country.[20]

In consequence of the above arrangement, a treaty was concluded at London on May 11, 1867, guaranteeing the perpetual neutrality of the Grand Duchy of Luxemburg, and Article II of that instrument declares that:

"The Grand Duchy of Luxemburg within the limits determined by the Act annexed to the treaties of 19th April 1839, under the guarantee of the Courts of Great Britain, Austria, France, Prussia, and Russia shall henceforth form a perpetually Neutral State. It shall be bound to observe the same neutrality towards all other States. The High Contracting Parties engage to respect the principle of Neutrality stipulated by the present Article.

"That principle is and remains placed under the sanction of the collective Guarantee of the Powers signing Parties to the present treaty, with the exception of Belgium, which is itself a Neutral State."[21]

The engagement taken by the British Government by the treaty of

[19] Eyschen, Das Staatsrecht des Grossherzogtums, 6 et seq.

[20] E. Servais, Le Grand Duché de Luxemburg et le Traité de Londres, 53-118, and 145.

[21] Herstlet, Map of Europe by Treaty III, 1803.

1867 had during the negotiations for its conclusion and subsequently stirred public opinion in England because the British public could not see why their country should assume such a heavy responsibility for a State in which the British interests were not in any way involved.

The Government, which was then presided over by the Earl of Derby, explained through its Ministers, in both Houses of Parliament, the limitations of the responsibility undertaken by Great Britain by the Treaty of 1867 in regard to the guarantee of the neutrality of Luxemburg, which may be interesting to summarize as having both a retrospective and actual interest. Thus Lord Stanley, then Secretary of State for Foreign Affairs, speaking on the subject in the House of Commons on June 14, 1867, said, among other things, that he had hesitated for two or three days before giving his assent to the arrangement. "In giving it," he said, he "acted under a feeling of doubt and anxiety such as" he "never felt upon other public questions," and pointed out that the alternative would have been war between France and Prussia. The Secretary of State concluded his speech with the following significant words, which have a bearing upon the present question: "Even if England had been able to keep out of it [of the war] which of course we should have desired, it might have been difficult, especially if Belgium had been attacked."[22]

Two days after the signature of this treaty, namely, on May 13, 1867, the Earl of Derby, answering a question in the House of Lords as to whether Great Britain could be called upon to enforce the treaty by force of arms in case the neutrality of the Grand Duchy of Luxemburg was violated, said: "The guarantee [of Luxemburg] is not a joint and separate guarantee, but is a collective guarantee, and does not impose upon this country any special duty of enforcing its provisions. It is a collective guarantee of all the Powers of Europe."[23]

On June 14, 1867 Mr. Labouchere (the well known late editor of TRUTH) brought up the same question before the House of Commons again, by asking the Secretary of State for Foreign Affairs for information as to the extent of the obligations of Great Britain in regard to the treaty of 1867. Lord Stanley, after referring to the Treaty of 1839 guaranteeing the possession of Luxemburg to the King of Holland, said: "The guarantee now given is collective only. That is an important distinction. It means this, that in the event of a violation of neutrality all the powers who have signed the treaty may be called upon for their collective action. No one of these powers is liable to be called upon to act single or separately. It is a case, so to speak, of limited liability. We are bound in honor, you cannot place

[22] Hansard, third series, 187, 1910.
[23] Hansard, ibid., 187, 379.

a legal construction upon it, to see in concert with others that these arrangements are maintained." * * * "If they decline to join us, we are not bound single handed to make up the deficiencies of the rest. Such a guaranty has obviously rather the character of a moral sanction to the arrangements which it defends, than that of a contingent liability to make war, but it would not necessarily impose the obligation."[24]

The Foreign Secretary, in order to prove that the guarantee of the neutrality of a State is not always a legal obligation but a discretionary right for the guarantor to use its forces for the enforcement of the neutrality by others, brought the example of the guarantee of the neutrality of Switzerland and of the extinct republic of Cracow in Poland, and said: "If all Europe combined against the republic (Switzerland) England would hardly be bound to go to war with all the world for its protection." Then referring to the violation of the pledge which had been given by certain powers to the Polish Republic, "we were parties to the arrangements which were made about Poland; they were broken, but we did not go to war. I only name those cases, as showing that it does not necessarily and inevitably follow that you are bound to maintain the guarantee under all circumstances by force of arms."[25]

The question came up again on the 20th of June in the House of Lords and the speeches made during that debate in the Upper House are not less interesting, particularly the utterances made on the subject by the Prime Minister and Lord Clarendon, whose opinions are now endorsed by the present British cabinet.[26]

Thus the Earl of Derby, answering a criticism of the construction given to the treaty (of 1867) by the Cabinet, said: "I do not entirely agree with the noble Earl (Earl Russell) as to the extent of our responsibility. * * * If it had been a continuance of the guarantee first given, I should think it a very serious matter, because the guarantee of the possession of Luxemburg to the King of Holland was a joint and several guarantee similar to that which was given with regard to the independence and neutrality of Belgium; it was binding individually and separately upon each of the powers. That was the nature of guarantee which was given with regard to Belgium and with regard to the possession of Luxemburg by the Duke-King.[27] Now a guarantee of neutrality is very different from a guarantee of possession. If France and Prussia were to have a quarrel between

[24] Hansard, ibid., 187, 1910-1923.

[25] Hansard, ibid., 187, 1923.

[26] Despatch of Sir Edward Grey to Sir F. Bertie, British Ambassador at Paris, in White Paper no. 148.

[27] The King of Holland, who was also Grand Duke of Luxemburg.

themselves, and either were to violate the neutrality of Luxemburg by passing their troops through the Duchy for the purpose of making war on the other, we might, if the guaranty had been individual as well as joint, have been under the necessity of preventing that violation, and the same obligation would have rested upon each guarantor; but as it is we are not exposed to so serious a contingency because the guarantee is only collective, that is to say, it is binding only upon all the Powers in their collective capacity; they all agree to maintain the neutrality of Luxemburg, but not one of the Powers is bound to fulfil the obligation alone. That is a most important difference, because the only two Powers by which the neutrality of Luxemburg is likely to be infringed are two of the parties to the collective guarantee; and therefore if either of them violates the neutrality, the obligation on all the others would not accrue."[28]

Lord Clarendon, who was above referred to, in endorsing the standpoint of the Cabinet, said: "With regard to the guarantee, I will go somewhat further than the noble Earl at the head of the Government, and say that if we had undertaken the same guarantee in the case of Luxemburg as we did in the case of Belgium, we should, in my opinion, have incurred an additional and very serious responsibility. I look upon our guaranty in the case of Belgium as an individual guarantee, and have always so regarded it; but this is a collective guarantee. No one of the Powers, therefore, can be called upon to take single action, even in the improbable case of any difficulty arising. I cannot help regarding this guarantee as a moral guarantee, a point of honor, as an arrangement which cannot be violated without dishonor by any of the signing Powers; and I believe an agreement of that nature may be more binding than the precise terms in which a treaty is couched, for it is a characteristic of these times that when formal treaties are found inconvenient, they are disregarded."[29]

The Earl of Granville, who subsequently (in 1870) became the Secretary of State for Foreign Affairs of the Cabinet presided over by Mr. Gladstone, although he approved the treaty of 1867, disapproved the construction given to it by the Government. "If Her Majesty's Government," he said, "instead of increasing our liabilities, have actually diminished them, it appears to me that there has been the most complete mystification of some of the most distinguished diplomatists of Europe ever heard of, * * * and further, "in spite of these fanciful interpretations as to how far we are bound by treaties, it is possible that we may have rendered ourselves liable at some

[28] Hansard, ibid. 188, 146 et seq.
[29] Hansard, ibid. 188, 152-153.

future time to practical inconvenience, or the risk of being considered unfaithful to our agreements."[30]

The obligation undertaken by the British Government by the guarantee of the neutrality of Luxemburg was considered to be so important that it was again discussed in the House of Lords on July 4, when the Earl of Derby spoke again on behalf of the Government in answer to a criticism made on the treaty by Lord Houghton.

"Whatever the interpretation," said the Prime Minister, "which I may put on particular words of the treaty, or whatever the interpretation which Her Majesty's Government may put on it, such interpretation cannot affect the international law by which the terms of all treaties are construed. I am not much skilled in the ways of diplomatists, but I believe that if there be one thing more clear than another it is the distinction between a collective and a separate and several guarantee. A several guarantee binds each of the parties to do its utmost individually to enforce the observance of the guarantee. A collective guarantee is binding on all the parties collectively; but if any difference of opinion should arise no one of them can be called upon to take upon itself the task of vindication by force of arms. The guarantee is collective, and depends upon the union of all the parties signing it; and no one of those parties is bound to take upon itself the duty of enforcing the fulfilment of the guarantee. As far as the honor of England is concerned, she will be bound to respect the neutrality of Luxemburg; * * * but she is not bound to take upon herself the Quixotic duty, in the case of a violation of the neutrality of Luxemburg by one of the other Powers, of interfering to prevent its violation because we have only undertaken to guarantee it in common with all the other great Powers of Europe. If the neutrality should be violated by any of them, then I say it is not a case of obligation, but a case of discretion, with each of the other signatory Powers as to how far they should singly or collectively take upon themselves to vindicate the neutrality guaranteed."[31]

The Earl of Derby in concluding his speech made again the distinction between the collective or common guarantee of the neutrality of Luxemburg and the single or separate of that of Belgium, and said that in the latter case the obligation was not discretionary as in the former. He illustrated his point of view by reminding the House of the two separate treaties concluded in 1856 concerning the guarantee of the integrity and independence of the Ottoman Empire, by which instruments some of the contracting parties undertook only to respect

[30] Hansard, ibid. 188, 154.
[31] Hansard, ibid. 188, 967 et seq.

that engagement, and others to enforce it, in case of the violation of its stipulations.

The distinction between a collective or common and a separate or single guarantee, and the difference as to the effects resulting from each of them in international instruments is criticised by the majority of the writers of the law of nations, but a respectable minority endorses, in a general way, the doctrine as was expounded by the British Ministers in 1867.

The great majority of the writers on the law of nations, in discussing the question of conventional guarantee, divide it into a single guarantee on one side, and collective on the other.

A guarantee is called single when it is given either by one or by various States without creating a legal connection between them in regard to the guarantee that each of them gave separately; in such a case, there is only an additional or additional guarantees.

It is called, on the contrary, collective or joint guarantee when the guaranteeing States undertake mutually to insure the same privileges to a State. In the latter case, two legal connections are created; one between the guarantors, each being obliged towards the others to carry out faithfully the obligation undertaken towards the guaranteed State; the other, between the guarantors and the guaranteed State, each being bound to fulfill its pledge, either alone or jointly with the other guarantors.[32]

According to a distinguished Swiss jurist and late Professor of International Law at the University of Brussels, the guarantee is collective, joint and mutual, when it is given by two or more States, by one and the same treaty and for one and the same condition of things. This writer holds that is immaterial whether any of the above names—collective, joint, or mutual—are expressly used in the instrument of guarantee and that their absence cannot alter the character of the joint obligation. In such a guarantee each guarantor is bound to carry out an indivisible obligation, but has also the right to come to a previous understanding with the co-guarantors in order to take a common action. If after consultation the guarantors cannot agree, each guarantor is nevertheless bound to execution of the obligation.

Now if the guarantee is collective and separate then the independent action upon the part of each guarantor is presumed, because in this case it is given expressly.

Then referring to the necessity of unanimity of action in a collective guarantee, he asserts that it is not necessary that there should be

[32] Henry Bonfils, Manuel de Droit International Public, Quatrième édition par Paul Fanchille, 492-493. Despagnet, Cours de Droit International Public, 503 (ed. 1899.) Milovanovitch, Des Traités de Garantie, 5 et seq.

unanimity, because if that was the case the collective guarantee would have been weaker than the simple guarantee, and often illusory. If a guarantor would allege that the intention of the contracting parties was to exclude a separate action, it is for such a guarantor to furnish the proof in order to sustain his allegation, because to presume such an intention would have been contrary to the original object of the guarantee, which is to insure and strengthen the guaranteed right.

This construction of the word collective is contrary to the views of the British Cabinet in connection with the treaty of 1867 guaranteeing the neutrality of the Grand Duchy of Luxemburg. This author calls those views erroneous.[33]

One of the most eminent contemporary Belgian jurists in affirming the division of guarantees into single on one hand, and joint and collective on the other, adds that, although the text of the treaty of 1839, guaranteeing the neutrality of Belgium, does not contain the words joint and collective, that guarantee is nevertheless a joint one, because it was not given separately by the five Powers, but jointly. He also criticises the British point of view in regard to the word "collective," and calls it a "strange view."[34]

A famous Swiss-German author is also of opinion that in a collective guarantee, each guarantor—after trying to come to a previous understanding with the co-guarantors and failing to agree on a common action—is bound to carry out alone the treaty stipulations because, he says, it is contrary to good faith to give only a moral value (this being an allusion to the British Minister's expression in 1867) to the collective guarantee, under the pretext that it is difficult for the guarantors to agree unanimously.[35]

Another German specialist on International Law, after making a distinction between a collective and collective and separate guarantee, holds that the latter is more strictly obligatory, in this sense, that each of the guarantors is bound to intervene, regardless of the inaction of the other co-guarantors. But this writer does not thereby conclude that the mere collective guarantee is not obligatory. On the contrary, he asserts that in a collective guarantee all the guarantors are "correi debendi." He also criticizes Lord Stanley's expression of "moral guarantee," and calls it a sophistry. Treaties are not concluded, he adds, in order to create engagements of honor.[36]

[33] A. Rivier, Principes du Droit des Gens II 104-105. Also F. Despagnet ibid, 144.

[34] For particulars, see E. Nys, Etudes de Droit International et Droit Politic, 158-163; E. Nys, Revue de Droit International et de Legislation Comparée III, 40 et seq.; E. Nys, Le Droit International III, 40-41.

[35] Bluntschli, Le Droit International Codifié traduit par Lardy, article 440 and note.

[36] F. H. Geffcken in Heffter's Droit International de l'Europe, traduit par J. Bergson, 219, note 8; also Geffcken in Holtzendorf's Handbuch des Völkerrechts III, 109.

Various other writers approve the above views as to the guarantee undertaken by the treaty of 1867 in regard to the neutrality of Luxemburg and consider that the guarantee given by that instrument is not a "moral obligation," but an obligation and that unanimity is not essential for putting it into execution.[37]

A distinguished Russian author disapproves also the above views of the British Ministers, and, although he holds that in a collective guarantee each guarantor is bound to carry out his engagement, thinks that a guaranteeing State is not bound to sacrifice her own existence to save another power.[38]

The British writers on International Law do not seem to be profuse on this controverted point. One of them, referring to it incidentally and commenting on the ambiguity of the construction given to collective guarantee by the Derby Cabinet in 1867, says: "It would be well to abstain from couching agreements in terms which may seriously mislead some of the parties to them, and to avoid making agreements at all which some of the contracting parties may intend from the beginning to be illusory.[39]

While the writers on International Law generally disapprove the construction given by the British Ministers to the stipulations of the treaty of 1867, in regard to Luxemburg, a few of them, without approving the words "moral obligation," countenance in substance the stand taken in 1867 by the Derby Cabinet.

One of the most learned French writers on International Law and Diplomacy, in discussing the question of treaty guarantees, says: "There are two kinds of guarantees, one is the simple guarantee, namely, when two or more Powers guarantee the perpetual neutrality of a State, without an express stipulation that such neutrality is placed under their common guarantee; such neutrality is then under the guarantee of each contracting party and also under that of all of them. In such a case the neutralized State or the co-guarantors have the right to invoke the execution of the stipulation of guarantee against each guarantor, if such neutrality is violated by any Power. This kind of guarantee is obligatory upon all acting in common or separately.

"The other is called collective or common guarantee, when it is

[37] E. Descamps, Neutralité de La Belgique, 541-542. This writer is an Ex-Senator of the Belgian Senate and also Professor at the University of Louvain. Also C. Piccioni, Essai sur la Neutralité Perpetuelle, 13 et seq.

[38] F. de Martens, Traitè de Droit International, traduit par Alfred Léon, I 554, 555.

[39] Hall, A Treatise on International Law (ed. 1884), 316.

[40] F. Pradier-Fodéré, Traité de Droit International Public, II, nos. 1010-1012. Two other eminent French writers approve this view and also the division as above given by the last author, Funck Brentano and Albert Sorel, Précis du Droit des Gens, 354-357. See also Calvo, Le Droit International Theorique et Pratique, IV, 499.

expressly stipulated as being such, like that of the treaty of 1867 guaranteeing the neutrality of Luxemburg. In the latter case the guarantors may be asked to intervene in case the guaranteed neutrality is violated, and they may act either in common or separately." In case of disagreement, one of them only can act irrespective of the other, but this writer holds that in the latter case a guarantor has the discretion and not the obligation to intervene. He therefore approves the viewpoint of the British Ministers in 1867. "What was provided in the treaty" (guaranteeing the neutrality of Luxemberg), he says, "is a collective action." "Does it not seem," he asks, "that to put all the weight of the guarantee on one Power only would be beyond the limits and the provisions of the Treaty?" He, however, admits that as long as there exist a sufficient number of Powers agreeing to intervene, the opposition of one cannot prevent the others from acting.[40]

One of the most distinguished citizens of the Grand Duchy of Luxemburg, who represented his country at the Conference of London of 1867, commenting on the treaty guaranteeing the neutrality of Luxemburg, throws a great deal of light on the diplomatic history of this subject.

In referring to the negotiations previous to the conclusion of that treaty, he tells us that these had been initiated by Austria, that Russia proposed the Conference, taking as a basis the neutralization of the Grand Duchy, but that it was Prussia who requested the insertion of the stipulation of guarantee of the Powers; further that both Prussia and Austria considered at the time that the neutralization should have been similar to that of Belgium. This writer therefore considers the British view as being untenable and contrary to the spirit of the negotiations which culminated in the conclusion of the treaty of 1867. In support of his view he quotes, as do other writers, an extract from Bismarck's speech of September 24, 1867, made in the Diet of the then German Confederation, when the future Iron Chancellor of Germany, referring to the withdrawal of the Prussian garrison from Luxemburg, said: "We have obtained a compensation in the neutralization of the territory of Luxemburg by the European guarantee, in the maintenance of which I have faith notwithstanding all cavil." (That being an allusion to the construction given to the treaty of 1867 by the Derby Cabinet.)[41]

There is evidently a misconception as to the meaning of the unfor-

[41] E. Servais, Le Grand Duché de Luxemburg et le Traité de Londres, 56 et seq. See also the work of another eminent citizen and Premier of the Grand Duchy in which he confirms the facts mentioned by the previous writer and disapproves of the views of the Derby Cabinet. Eyschen, Das Staatsrecht des Grossherzogtums, 19 et seq. See protest of Council of State of Luxemburg against the British Cabinet's views in Funck Brentano and Sorel, op. cit. appendix, 506.

tunate expression used by the British Ministers in explaining to Parliament the liability of England resulting from the treaty of 1867. What Lord Derby and his "noble relative" (as Parliamentary usages required him to call his son, Lord Stanley) meant by "moral obligation" was that Great Britain was not bound, single handed, to protect Luxemburg, if her neutrality was violated. What was uppermost in the mind of the then Secretary of State, before assenting to the signature of that instrument (which he did, as he said, reluctantly), was a collective action of the Powers. What is important to note is, that notwithstanding the criticism at that time of the Liberal Party as to the expression "moral obligation," the Liberal Party of today, through its Secretary of State for Foreign Affairs, endorsed the point of view of the Derby Cabinet. In fact, we see that Sir Edward Grey, writing to the British ambassador at Paris on August 2, 1914, says: M. Cambon [the French ambassador at Berlin] asked me about the violation of Luxemburg. I told him the doctrine on that point laid down by Lord Derby and Lord Clarendon in 1867.[42]

It should, however, be observed, that in assuming such an obligation as the guarantee of the neutrality of a State it is imperative for the guaranteeing Power to express from the beginning its point of view on its eventual liability, and not to give hopes to small and weak States whose whole existence may be at stake, so that they may at the outset regulate their policy in order to safeguard their existence.

As an English writer observes, Great Britain has signed so many of these treaties—some, it is true, in conjunction with other Powers—that "some of the engagements are absolute, others conditional, some are joint, others several, and as if to complicate the position as much as possible, the terms of many treaties are couched in language so vague and so indefinite, that it is almost impossible to say what England—or some other Power—is bound to do, what she can call on the other signatories to perform."[43]

This explains the theoretical and doctrinal side of the obligation incumbent upon Great Britain and the other Contracting Parties to the Treaty of 1867 who guaranteed the neutrality of the Grand Duchy of Luxemburg, which was so wantonly violated by Germany in the present war, but attracted very little attention in belligerent and neutral countries. As a matter of fact the German Government did not seriously attempt to justify its action in the case of Luxemburg as in that of Belgium.

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(*To be continued*)

[42] White Paper no. 148.

[43] J. E. C. Munro, an article entitled England's Treaties of Guarantee, in Law Magazine and Review (4th series) May, 1881.